

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARILYN YVETTE COOK,

Plaintiff,

v.

STATE OF TENNESSEE, et al.,

Defendants.

Case No. 23-cv-04619-JCS

**ORDER TO SHOW CAUSE RE
DISMISSAL UNDER 28 U.S.C. § 1915**

I. INTRODUCTION

Plaintiff Marilyn Yvette Cook, pro se, applied to proceed in forma pauperis and the Court granted her application. *See* Docket No. 6. The Court now reviews the sufficiency of Plaintiff's complaint to determine whether it satisfies 28 U.S.C. § 1915(e)(2)(B). Because the complaint does not appear to plausibly state a claim, Plaintiff is ORDERED TO SHOW CAUSE why the complaint should not be dismissed. Plaintiff may file either an amended complaint or a response to this order addressing why her complaint is sufficient, no later than November 17, 2023. The Case Management Conference set for December 8, 2023 is vacated.

II. ALLEGATIONS OF THE COMPLAINT

Plaintiff has named the following defendants in her complaint: the State of Tennessee, Blount County Register of Deeds, Phyllis Crisp, the Alcoa Police Department, Kris Sanders. She asserts in the Complaint that there is diversity jurisdiction over her claims because she is a resident of California and all of the defendants reside in Tennessee. Compl. at ECF p. 1. She asserts that there is more than \$75,000 in controversy. *Id.* In the "Relief Sought" section of her complaint, she seeks "a sum certain" of \$365,000,000.00. *Id.* at ECF p. 4.

The Fact section of the complaint begins with the allegation that on August 7, 2017 a

1 “True Bill” was filed in the Circuit Court for Blount County Tennessee. *Id.* at ECF p. 2. This
 2 document is purportedly attached as Exhibit 1 (ECF pp. 12-24), which is a series of documents
 3 that appear to relate to a property located at 273 West Stephenson Street, Alcoa, Tennessee. This
 4 allegation is followed by “THE 10 MAXIMS OF COMMERCIAL LAW[,]” which include the
 5 following highlighted statements:

6 3. In commerce, truth is sovereign.

7 4. Truth is expressed in the form of an affidavit.

8 5. An un rebutted affidavit stands as truth in commerce.

9 6. An un rebutted affidavit becomes judgment in commerce.

10 7. A matter must be expressed to be resolved.

11 . . .

12 10. A lien or claim can be satisfied only through (a) rebuttal by counter affidavit point by
 13 point; (b) resolution by a jury; or (c) payment or performance of the claim.

14 *Id.* at ECF p. 2.

15 Next, Plaintiff alleges:

16 CHARGE: VIOLATION OF DRAWING PROPERTY TRANSFER
 17 DOCUMENTS WITHOUT INTEREST IN PROPERTY;
 18 VIOLATION OF DRAWING A LIEN AGAINST REAL OR
 19 PERSONAL PROPERTY WITHOUT LEGAL BASIS x 5;
 20 CRIMINAL IMPERSONATION.

21 1. The PLAINTIFF MARILYN YVETTE COOK has an interest in
 22 the property stated in the TRUE BILL. See EXHIBIT 1, Fax to LVN
 23 CORPORATION, AVIDAVIT OF ADVERSE POSSESSION,
 24 AFFIDAVIT IN LAWFUL POSSESSION/NOTICE TO PARTIES,
 25 NOTICE OF REVOCATION OF AND COLLAPSE OF DEED OF
 26 TRUST #001810260.

27 2. The PLAINTIFF is appointed Personal Representative of the Estate
 28 of FLORENCE LOUISE ROWAN and the ESTATE of EVA
 JUANITA COTNER. See EXHIBIT 2, ORDER OPENING THE
 ESTATE AND APPOINTING PERSONAL REPRESENTATIVE
 AND ORDER TO REOPEN ESTATE.

3. See Exhibit 3, UCC-3 FILING Certification of Trust regarding the
 FLORENCE LOUISE ROWAN REVOCABLE LIVING TRUST
 AND Certification of Trust regarding the EVA JUANITA COTNER
 REVOCABLE LIVING TRUST.

4. See EXHIBIT 4, UCC LIEN CERTIFIED SEARCH REPORT.

Id. at ECF p. 3. This is followed by the allegation that “PLAINTIFF has established ‘JUDGMENT IN ESTOPPEL’ against the DEFENDANTS as evidenced by attached EXHIBITS.” *Id.* Under the heading “Claims,” Plaintiff alleges: “PLAINTIFF is entitled to relief in the equitable claim. DEFENDANTS is estopped for INTERLOPING in COMMERICAL affairs and disregarding the PLAINTFF as a CREDITOR. See Exhibit 5 COPY RIGHT NOTICE.” *Id.*

Finally, under the heading, “RELIEF SOUGHT” Plaintiff states:

PLANTIFF request Judicial review of her Administrative Process and Remedy, find the facts and execute on the law of contract and COMMERCIAL LAW. Finally, PLAINTIFF Requests the Court ORDER the DEFENDANTS to pay the sum certain \$365,000,000.00 over to PLAINTIFF, for damages she has suffered in reference to the DEFENDANTS and release the ORDER of the Court to the PLAINTIFF MARILYN YVETTE COOK.

Id.

III. ANALYSIS

A. Legal Standards Under 28 U.S.C. § 1915 and Rule 12(b)(6)

Where a plaintiff is found to be indigent under 28 U.S.C. § 1915(a)(1) and is granted leave to proceed in forma pauperis, courts must engage in screening and dismiss any claims which: (1) are frivolous or malicious; (2) fail to state a claim on which relief may be granted; or (3) seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Marks v. Solcum*, 98 F.3d 494, 495 (9th Cir. 1996).

To state a claim for relief, a plaintiff must make “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Further, a claim may be dismissed for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6); *see also Diaz v. Int’l Longshore and Warehouse Union, Local 13*, 474 F.3d 1202, 1205 (9th Cir. 2007). In determining whether a plaintiff fails to state a claim, the court takes “all allegations of material fact in the complaint as true and construe[s] them in the light most favorable to the non-moving party.” *Cedars-Sinai Med. Ctr. v. Nat’l League of Postmasters of U.S.*, 497 F.3d 972, 975 (9th Cir. 2007). However, “the tenet that a court must accept a complaint’s allegations as true is inapplicable to legal conclusions [and] mere conclusory statements,” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)), and courts “do not

necessarily assume the truth of legal conclusions merely because they are cast in the form of factual allegations.” *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1034 (9th Cir. 2010) (internal quotation marks omitted). The complaint need not contain “detailed factual allegations,” but must allege facts sufficient to “state a claim to relief that is plausible on its face.” *Id.* at 678 (citing *Twombly*, 550 U.S. at 570).

Where the complaint has been filed by a pro se plaintiff, courts must “construe the pleadings liberally . . . to afford the petitioner the benefit of any doubt.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). “A pro se litigant must be given leave to amend his or her complaint unless it is absolutely clear that the deficiencies in the complaint could not be cured by amendment.” *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987), superseded on other grounds by statute, as recognized in *Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000) (en banc). Further, when it dismisses the complaint of a pro se litigant with leave to amend, “the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity to amend effectively.” *Id.* (quoting *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)).

B. Discussion

Plaintiff has not complied with Rule 8(a)(2). She has not alleged specific facts identifying the relevant conduct of each defendant. Nor has she identified the specific claims she asserts against each defendant. The Court notes that there are no factual allegations whatsoever relating to any of the named defendants. Although it appears that Plaintiff may be asking the Court to find that she is the owner of the property that is described in many of the documents attached to the complaint, there is no clear explanation of the legal basis for her claim or how her legal theory relates to any particular defendant.

The Court also notes that to the extent that Plaintiff seeks to sue the State of Tennessee, that defendant is entitled to immunity under the Eleventh Amendment unless it has specifically consented to being sued in federal court. *See Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 100 (1984) (“an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another state.”) (quoting *Employees v. Missouri Dept. of*

Public Health and Welfare, 411 U.S. 279, 280 (1973)). There are no allegations in the Complaint that suggest that Plaintiff's claims fall within any consent to be sued by the State of Tennessee.

IV. CONCLUSION

For the reasons discussed above, Plaintiff is ORDERED TO SHOW CAUSE why this case should not be dismissed for the reasons stated above. Plaintiff may respond by filing either an amended complaint that addresses the deficiencies discussed above or a response that addresses why her current complaint is sufficient. Plaintiff's response shall be filed by **November 17, 2023**. If Plaintiff does not file a response by that date, the case will be reassigned to a United States district judge with a recommendation that it be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B). Any amended complaint must include the caption and civil case number used in this order (23-cv-04619) and the words FIRST AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces the previous complaint, any amended complaint may not incorporate claims or allegations of Plaintiff's original complaint by reference, but instead must include all of the facts and claims Plaintiff wishes to present and all of the defendants she wishes to sue.

Plaintiff, who is not represented by counsel, is encouraged to consult with the Federal Pro Bono Project's Legal Help Center in either of the Oakland or San Francisco federal courthouses for assistance. The San Francisco Legal Help Center office is located in Room 2796 on the 15th floor at 450 Golden Gate Avenue, San Francisco, CA 94102. The Oakland office is located in Room 470 S on the 4th floor at 1301 Clay Street, Oakland, CA 94612. Appointments, which are currently being conducted by telephone or video-conference, can be made by calling (415) 782-8982 or emailing federalprobonoproject@sfbare.org. Lawyers at the Legal Help Center can provide basic assistance to parties representing themselves but cannot provide legal representation.

IT IS SO ORDERED.

Dated: October 31, 2023


 JOSEPH C. SPERO
 United States Magistrate Judge